court, that desertion is not a part of the crime as defined by this law. It also provides a means of securing the arrest of an offender and bringing him in the court, and the venue is in any county where the child is, and is not receiving the proper support.

"I have had several indictments under this law and have found it very practical and satisfactory in every way." Extract from correspondence.—Eds.

WM. J. WOOD, Lebanon, Ind., Pros. Atty. 20th Judicial Circuit.

Instructions to the Jury in Montana.—Below is the text of a letter dated November 19, 1912, from Judge George B. Winston of Anaconda, Montana. It was suggested by a reading of the recent report of Committee E of the Institute. Thereafter is a copy of the law of Montana relating to criminal procedure.—[Eds.]

"I just read with interest the report of Committee 'E' of the Institute in the matter of criminal procedure, reported on page 566, Vol. III, number 4, of the Journal of the American Institute of Criminal Law and Criminology for November, 1912, and especially recommenadtion two and the discussion concerning it. Recommendation two is as follows: 'That such legislation be had as will give to trial judges the right to charge jurors orally and to limit exceptions to such charge to the specific objections made by counsel at the time of the charge in the presence of the jury and before it has retired from the bar.' I think that this recommendation is open to a number of very serious objections, and that many of the objections urged by Mr. William E. Higgins to the recommendation are entitled to great weight. But the chief things to be objected to in this recommendation, it seems to me, are that jurors should be charged orally, and that the exceptions to such charge and the specific objections thereto should be made in the presence of the jury. In view of the fact that the legislature of Montana in 1907 passed two acts relating to this very subject, one regulating the practice in civil cases and one in criminal cases, and both being alike, I am taking the liberty of writing you and of sending you a copy of the act regulating the method of procedure in the trial of criminal actions. It appears to me that the method prescribed by our code is so much better in every way than the one recommended by the committee mentioned that I am going to ask that you give it publication in your Journal. This law has been in force in Montana since March, 1907, and has worked most satisfactorily. It has had the effect of minimizing the reversal of cases on grounds of error in the refusal to give and in the giving of instructions, in both civil and criminal actions. It works no hardship upon either party to the trial and, in my opinion, is one of the most salutary provisions of both our civil and criminal practice acts. Instructions are settled out of the presence and hearing of the jury and, therefore, the jury cannot be influenced or prejudiced by any argument or theory of counsel concerning the matter of the giving or the refusal to give instructions. When the jury are called in after the instructions have been settled they have no intimation whatsoever as to what instructions are given at the request of counsel or what are given of the court's own motion. Neither do they receive any intimation as to what was the contention or theory advanced by counsel during the settlement of the instructions. In actual practice this is how this procedure works: when the evidence is in, the court asks counsel if they have any instructions to offer and, if so, to hand them to the court. On receipt of the requested instructions the court passes those requested by the plaintiff to counsel for the

defendant, if copies have not already been given to him; and those requested by the defendant are handed to counsel for the plaintiff. Abundant opportunity is allowed each side to study these instructions, as well as those which the court proposes of its own motion. Then the court invites an informal argument from counsel as to the propriety of giving or refusing to give these instructions. The judge after the argument indicates to counsel what instructions he proposes to give and what he proposes to refuse to give and then counsel state their objections, if they have any, and after the ruling on these objections the parties take their exceptions. All this, as you will note from the act, is made a record of by the court reporter. Often several hours are consumed in the settlement of instructions both in criminal and civil cases, the time depending largely on the importance of the case and on the law points involved. It seems to me that the practice is as fair to a defendant in a criminal case as he has any right to expect. And it is certainly only just that the trial judge should have the right to know, before he gives or refuses to give an instruction, just what complaint the defendant has to make in relation thereto. Counsel in the case usually has weeks, if not months, before the trial to become acquainted with the facts and the law in the case, and should be in a better position than the judge to point out error, if any, in the instructions submitted. To my mind, it is a confession of great weakness on the part of any attorney to argue that he has not sufficient opportunity to formulate objections to the charge within the time allowed for the settlement thereof. If he, who should be familiar with the facts and law of the case, cannot protect his client's interest in this regard, then he has no business in the practice of the law. The real objection on the part of those lawyers who seek to prevent such legislation is that they want to be in a position where they can put the court in error. I think the law we are now working under in this regard is as nearly ideal as it could be made. Notwithstanding this, some lawyers in this state attempted to have it amended at the last session of the legislature, in a manner that would have emasculated the act completely. I am glad to say that they failed in this effort."

GEO. B. WINSTON, Judge Third Judicial District, Anaconda, Montana.

LAWS OF MONTANA. TENTH SESSION, 1907. P. 197.

CHAPTER 82.

An Act to Amend Section 2070 of the Penal Code of Montana, and to Repeal an Act Approved February 15th, 1902, Relating to the Method of Procedure in the Trial of Criminal Actions.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section No. 2070 of the penal code of the State of Montana be and the same is hereby amended, so as to read as follows:

1. The county attorney must state the case and offer evidence in support of the prosecution.

2. The defendant, or his counsel, may then state his defense and offer evidence in support thereof.

3. The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of jutsice, permit them to offer evidence upon their original case.

4. When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing and

numbered by the party, or his attorney, and together with a written request asking the same, and signed by the party, or his attonrey, delivered to the court. At all times prior to charging the jury the instructions to be given shall be, without the presence of the jury, settled by the court, at which settlement counsel for the parties shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court, and to present and argue to the court objections and exceptions to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of the instructions the respective counsel, or the parties, shall specify and state the particular ground on which the instruction is objected or excepted to, and it shall not be sufficient in stating the ground of such objection or exception to state generally that the instruction does not state the law, or is against law, but such ground of objection or exception shall specify particularly wherein the instruction is insufficient, or does not state the law, or what particular clause therein is objected to.

The court shall pass upon the objection to the instructions requested and also those proposed to be given by the court, and shall either give each instruction as requested or positively refuse to do so, or give the instruction requested with a modification, and shall mark or endorse upon each instruction offered and requested by the parties in such manner that it shall distinctly appear what instructions were given in whole or in part, and in like manner those refused or modified, and if modified, wherein the modification consisted. The court shall also give the instructions as originally proposed to be given by the court, or as modified, and all the instructions given by the court, together with those refused, must be filed as a part of the record of the cause.

The court stenographer shall be present at such settlement and shall take down all the objections and exceptions of the respective counsel to all or any of the instructions given or refused by the court together with the modifications made therein, and the ruling of the court thereon, and at the close of the trial such objections and exceptions taken during the settlement, together with the rulings of the court thereon, must be written out at length or printed in type by the stenographer and filed with the clerk forthwith, and thereafter such exceptions may be settled in a bill of exceptions as provided in section 2171 of the penal code of Montana, or an act of the eighth legislative assembly of the State of Montana Entitled "An Act to Provide for the Settlement of Bills of Exception taken before or after trial in Criminal Cases and to Provide for the Review by the Supreme Court on Appeal of Proceedings, Evidence and Matters contained in such Bill of Exceptions," approved February 26th, 1903.

No motion for new trial on the ground of errors in the instructions given shall be granted by the district court unless the error so assigned was specifically pointed out and excepted to at the settlement of the instructions as herein provided; and no cause shall be reversed by the Supreme Court for any error in the instructions which was not specifically pointed out and excepted to at the settlement of the instructions herein specified, and such error and exception incorporated in and settled in the bill of exceptions as herein provided.

5. When the instructions have been passed upon and settled by the court, and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as are

passed upon and settled at such settlement. In charging the jury, the court shall give to them all matters of law which it thinks necessary for its information in rendering a verdict.

6. When the jury has been charged, unless the case is submitted to the jury, on either side, or on both sides, without argument, the plaintiff must commence and may conclude the argument. If several defendants, having several defenses, appear by different counsel, the court must determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case, as given in the instructions of the court, as well as upon the evidence of the case.

Section 2. That an act approved February 15th, 1901, entitled, "An Act to Amend Section 2070 of the Penal Code of Montana, relating to the method of Procedure in the trials of Criminal Actions," and all acts and parts of acts in conflict herewith be and the same are hereby repealed.

Section 3. This Act shall take effect and be in force from and after its passage and approval by the Governor.

Approved March 4th, 1907.

For Relief to Persons Erroneously Convicted.—The following is the bill referred to in Dean Wigmore's editorial in the present issue. Together with the editorial and Mr. Borchard's article in this number of the JOURNAL it has been reprinted in Senate Document 974, 62d Congress, 3rd Session, and may be obtained from Senator Sutherland or any other member of Congress. The bill was introduced in the House on December 5 by Mr. Evans and in the Senate on December 10 by Senator Sutherland. H. R., 26748; S. 7675.

To grant relief to persons erroneously convicted in courts of the United States.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. That any person who having been convicted for any crime or offense against the United States, shall hereafter, on appeal from the judgment of conviction or on the retrial or rehearing of his case, be found to have been innocent of the crime with which he was charged and not guilty of any other offense against the United States, or who, after inquiry by the Executive has received a pardon on the ground of innocence, may, under the conditions hereinafter mentioned, apply by petition for indemnification for the pecuniary injury he has sustained through his erroneous conviction and imprisonment.

The bill is limited to convictions in the federal courts—that is, crimes or offenses against the United States. It is limited to those only who have been *convicted and imprisoned* under a judgment of conviction, and whose innocence is subsequently established. The right to the relief is discretionary only. It is called here indemnification, although some other word may be substituted. The relief is limited to the *pecuniary* injury, thus excluding all compensation for *moral* injury, which, in case of conviction for crime, is generally the more serious element of injury. This limitation follows, in general, the European statutes and has as its object the restriction to its narrowest limits (while acknowledging the principle) of a demand on the State Treasury. When the innocence is established after the wrongful conviction *plus* imprisonment, the indemnity should cover the injury during the whole period of detention, both before and after trial. The expression "of the crime which he was charged *or of any other offense against the United States*" has been used to cover cases where the indictment may fail on the original count, but claimant may yet be guilty of another or a minor offense. Therefore, if the accused has committed *any* offense